

# SENATE RECORD VOTE ANALYSIS

105th Congress  
2nd Session

Vote No. 161

June 17, 1998, 5:19 p.m.  
Page S-6479 Temp. Record

## TOBACCO BILL/Cloture, Commerce-2 Substitute (4th Attempt)

**SUBJECT:** National Tobacco Policy and Youth Smoking Reduction Act . . . S. 1415. Lott motion to close debate on the Commerce Committee modified substitute amendment No. 2420.

### ACTION: CLOTURE MOTION REJECTED, 57-42

**SYNOPSIS:** The "Commerce-2" committee substitute amendment (see NOTE in vote No. 142) to S. 1415, the National Tobacco Policy and Youth Smoking Reduction Act, will raise up to \$265.0 billion over 10 years and up to \$885.6 billion over 25 years from tobacco company "payments" (assessments) and from "look-back" penalties that will be imposed on tobacco companies if they fail to reduce underage use of tobacco products. Most of the money will come from the required payments (\$755.67 billion over 25 years). Additional sums will be raised from other fines and penalties on tobacco companies, and the required payments will be higher if volume reduction targets on tobacco use are not met. The tobacco companies will be required to pass on the entire cost of the payments to their consumers, who are primarily low-income Americans. By Joint Tax Committee (JTC) estimates, the price of a pack of cigarettes that costs \$1.98 now will rise to \$4.84 by 2007. The amendment will require the "net" amount raised, as estimated by the Treasury Department, to be placed in a new tobacco trust fund. (The net amount will be equal to the total amount collected minus any reductions in other Federal revenue collections that will occur as a result of increasing tobacco prices. For instance, income tax collections will decline because there will be less taxable income in the economy). The JTC estimates that the amendment will raise up to \$232.4 billion over 9 years, but only \$131.8 billion net. Extending the JTC's assumptions through 25 years, a total of \$514.2 billion net will be collected. The amendment will require all of that money to be spent; 56 percent of it will be direct (mandatory) spending. The Federal Government will give States 40 percent of the funds and will spend 60 percent. Medicare will not get any of the funding in the first 10 years unless actual revenues are higher than estimated in this amendment (in contrast, the Senate-passed budget resolution required any Federal share of funds from tobacco legislation to be used to strengthen Medicare; see vote No. 84).

(See other side)

YEAS (57)			NAYS (42)			NOT VOTING (1)	
Republicans (14 or 26%)	Democrats (43 or 96%)		Republicans (40 or 74%)	Democrats (2 or 4%)		Republicans (1)	Democrats (0)
Abraham	Akaka	Johnson	Allard	Hutchison	Ford	Specter- <sup>2</sup>	
Bennett	Baucus	Kennedy	Ashcroft	Inhofe	Robb		
Chafee	Biden	Kerrey	Bond	Kempthorne			
Collins	Bingaman	Kerry	Brownback	Kyl			
D'Amato	Boxer	Kohl	Burns	Lott			
DeWine	Breaux	Landrieu	Campbell	Lugar			
Frist	Bryan	Lautenberg	Coats	Mack			
Grassley	Bumpers	Leahy	Cochran	McConnell			
Gregg	Byrd	Levin	Coverdell	Murkowski			
Jeffords	Cleland	Lieberman	Craig	Nickles			
McCain	Conrad	Mikulski	Domenici	Roberts			
Roth	Daschle	Moseley-Braun	Enzi	Santorum			
Smith, Gordon	Dodd	Moynihan	Faircloth	Sessions			
Snowe	Dorgan	Murray	Gorton	Shelby			
	Durbin	Reed	Gramm	Smith, Bob			
	Feingold	Reid	Grams	Stevens			
	Feinstein	Rockefeller	Hagel	Thomas			
	Glenn	Sarbanes	Hatch	Thompson			
	Graham	Torricelli	Helms	Thurmond			
	Harkin	Wellstone	Hutchinson	Warner			
	Hollings	Wyden					
	Inouye						

#### EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

#### SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

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On June 17, 1998, Senator Lott sent to the desk, for himself and others, a motion to close debate on the Commerce-2 amendment. By unanimous consent, the vote on that motion was held on June 17. The Senators who filed cloture did not do so out of support for the modified amendment, as amended. Instead, their intent was procedural--they wished to gauge whether there was enough support in the Senate to bring the bill to a final vote.

NOTE: A three-fifths majority (60) is required to invoke cloture. Several amendments were pending at the time of the vote. See vote No. 160 for details.

**Those favoring** the motion to invoke cloture:

Argument 1:

The Republican Leader said last week that this bill was not going to go anywhere unless amendments were added to give marriage penalty tax relief to low-income Americans, to use part of the bill's revenues to fight illegal drug abuse, and to cap attorney fees. Republican amendments on each of those proposals, despite the lengthy and strenuous opposition of nearly every Democrat, have now been adopted. The bill, from our point of view, has been made much worse. Still, we are willing to move forward in the spirit of compromise. Our Republican colleagues, though, are not. They have gotten exactly what they said they wanted, yet still they say this is a huge tax-and-spend bill, and oppose efforts to bring debate to a close. No one should have any doubts about what is happening here--this bill is being killed.

Argument 2:

We are very disappointed over what has happened in the past few weeks. Moderate Members in both parties had decided on a strategy for passing tobacco legislation that was abandoned as soon as this bill reached the floor. That strategy was to pass a bill out of the Commerce Committee, regardless of its contents, and quickly pass it. The vote on passage would not be based on the bill's provisions. Instead, it was felt that the only possible way to come up with a workable, constitutional agreement was to get the negotiations behind the closed doors of a conference on the bill. If we are going to succeed in reducing youth smoking, we are going to need the tobacco industry's cooperation, and we are not going to get that with any bill that is crafted on the Senate floor. The tobacco companies are the favorite villain of many Members on both sides of the aisle, so any bill that is crafted is going to be so punitive that there will be no chance that the tobacco companies will voluntarily agree to abide by its provisions. We understood that the committee substitute amendment that was drafted by the Committee would be unacceptable to the companies, but our hope was to bring them back into negotiations by making concessions once we got the bill to conference.

Unfortunately, some Members of the majority party disagreed with this strategy. They found particular elements of the Commerce-2 amendment so objectionable that they were not willing to pass it just as a procedural maneuver to get the bill to conference. They felt that they would be unable to change the bill enough in conference if those elements were in the bill as it passed the Senate. They began offering amendments. Democrats then ignored the procedural necessity of getting the bill to conference and fought the Republican amendments, at length, on substantive grounds. As a result, we have been in deadlock for a month. Those substantive debates have eroded support for cloture. If we had not engaged in them, many more Republicans would have supported cloture. Now that the debates have occurred, the vote has become much more about substance than procedure. As a result, the bill is going to be defeated.

**Those opposing** the motion to invoke cloture contended:

Argument 1:

The month of debate that the Senate has spent on this bill has exposed just how bad it really is. Consequently, we believe that it will be impossible to invoke cloture on it or anything even remotely resembling it. The Senate can and should enact legislation to reduce teen smoking, but this bill has precious little to do with that goal. It is just a typical liberal, tax-and-spend monstrosity that very likely will have little or no effect on underage smoking, but that will tax blue-collar Americans unmercifully and that will greatly expand the size of the Federal Government.

First, it claims to attack the tobacco companies, but it requires the tobacco companies to pass on the entire cost of the "payments" (taxes) it imposes to their customers. Amazingly, it will be illegal for the companies to reduce their profits, cut their advertising budgets, sell assets, or in any other way assume the costs. No, the people whom our colleagues like to call the tobacco companies' addicted victims, smokers, will have to pick up the entire tab.

Second, the people who will have to pay those taxes are primarily low-income Americans. Fully 60 percent of the taxes will be paid by people earning less than \$30,000 per year. People earning less than \$15,000 per year will pay 34 percent of the total.

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Smoking is primarily a blue-collar phenomena in America today. Throughout this debate our Democratic colleagues have not expressed the slightest concern for the tax burden that will be placed on these hard-working Americans. We tried to give back one-third of the money by giving these same low-income Americans relief from the marriage tax penalty, but Democrats fought us for weeks, and in the end, to get any relief passed, we had to compromise by phasing it in. Even then most Democrats opposed the amendment and pushed a watered-down, anti-family and sexist cover vote amendment. The Democrat's offensive alternative was based on the proposition that a marriage is not an equal partnership; according to that amendment, the wife's contribution to a family's income is worthless unless she has a paying job.

Third, the "payments" (taxes) that will be imposed will be enormous--at least \$755 billion over the next 25 years. That number is easily arrived at by totaling up the required taxes on smokers in the first years, and then adding in the minimum increase of 3 percent per year for the years after the last year for which a hard-and-fast number is given. The reality is that more than \$755 billion could be collected. Further, with the maximum look-back penalties of \$241 billion added, the total could climb to \$1 trillion. Our colleagues were not content with \$1 trillion in new taxes, though--there are several other possible penalties in the bill that could greatly add to the total. Our colleagues repeatedly say that this bill will "only" raise cigarette prices by \$1.10 per pack. We defy them to show us where in this bill it says anything about \$1.10. The fact is they cannot because no such provision exists, and the Joint Tax Committee tells us that the bill will cause the price of a pack of cigarettes that costs \$1.98 now to rise to \$4.84 by 2007.

Fourth, though the claimed reason for raising cigarette prices is to discourage kids from smoking, underage purchases of cigarettes account for only 2 percent of purchases, and kids who will pay \$150 for a pair of status-symbol tennis shoes are not going to be discouraged from smoking by a price increase. Kids already typically smoke the most expensive brands, most of the kids who smoke do so only occasionally, and they generally smoke because of peer pressure. A \$2 or \$3 tax on cigarettes will not have much effect on kids, but it will severely punish low-income Americans who smoke a pack or more a day.

Fifth, every penny of the hundreds of billions of new tax dollars that will be raised by this bill will be spent. Republicans, just a couple of months ago, voted that the Federal share of any tobacco settlement should be saved for Medicare, but this bill goes so far as to say that none of the money may be saved for Medicare unless even more taxes than expected are collected. When this debate started, our liberal colleagues insisted that the main purpose of this bill was to raise tax prices to discourage teens from smoking. They denied our charge that they were just trying to raise money to spend. When we began offering amendments to reduce their spending, though, they changed their tune, and insisted that the only way to stop kids from smoking was for the Federal Government to spend hundreds of billions of dollars. Of course, before the tobacco settlement, these same liberal Senators backed a Clinton Administration regulatory plan that they said would cut teen smoking by more than half. Interestingly, that plan did not involve new taxes, and it did not involve a huge amount of new spending. Perhaps, then, teen smoking is just being used as a convenient excuse for massive new taxes and spending.

Sixth, the bill will create huge new bureaucracies, and will massively expand existing bureaucracies, to spend the money. At least 30 new Federal programs will be created, including one to spend \$350 million per year in foreign aid on anti-tobacco programs. We drew a chart of those provisions in Commerce-1, so the Clinton Administration, which had asked for all of that spending and had indeed crafted the Commerce-1 amendment, then rewrote the amendment so that in Commerce-2, instead of requiring many of those programs, it just says that it "may" create them. Does anyone doubt that the Clinton Administration, which wrote into the bill the provisions giving it permission to create programs, will actually exercise that authority? Obviously it will. It just used the word "may" as a political gimmick. President Clinton has said that the charge that this bill will create a huge new bureaucratic maze "is the biggest load of hooey I ever heard in my life." The reality is that in all of our years in Congress this bill is the second biggest load of sooeey we have ever seen, surpassed only by President Clinton's failed attempt to nationalize health care a few years ago. We have no doubt that if it were enacted, the usual social-service, interest-group hogs would line up to feed at the government trough.

Seventh, the bill will cede unprecedented powers to unelected government officials. For instance, under this bill, the Secretary of Health and Human Services will be given authority to assess fines of up to \$7.7 billion. She will decide whether to assess those fines based upon polls she will take, of children, to determine the percentage of kids who smoke and the brands they smoke. However she designs those polls, and even if she blatantly rigs those polls, they will be "deemed" accurate. Another truly offensive provision, which was adopted by an amendment, will give the FDA the right to deny a tax deduction if it says its regulations were violated.

Eighth, the bill contains numerous unconstitutional provisions. Even supporters of this tax-and-spend proposal should be concerned by that fact, because if this bill is enacted the tobacco companies will be able to beat many of its provisions in court. Unconstitutional provisions include measures that will punish tobacco companies based on the actions of others, and advertising restrictions that will violate the first amendment.

Ninth, the bill will subject virtually every business owner and property owner to penalties. For instance, one little provision in this bill says that it will be illegal to smoke or otherwise use tobacco in any facility or by the entrance to any facility if it is "regularly entered by 10 or more individuals at least one day per week." The owner of a building can be punished for not enforcing that new law. Also, merchants will be hit with fines of up to \$10,000 if they fail to check the identifications of anyone who is under the age

of 27. Thus, a clerk will have to ask a 26-year-old Marine sergeant with a few kids, who obviously is older than 18, for an ID, or the store will get hit with a huge fine.

Tenth, this bill will guarantee huge and continued windfalls for trial lawyers. After considerable effort, we finally managed to get an amendment passed to limit lawyers to being paid a maximum of “only” \$4,000 per hour for current cases and of “only” \$500 per hour for future cases. In either case, the pay will be huge. In the latter case the limit will be lower because it is understood that the cases will be very easy to win. In fact, this bill will make them almost impossible to lose, because it will require a court to assume that tobacco use caused a claimed injury if that injury is listed in any of three particular studies as being an injury that can be caused by tobacco. Those studies list a very wide range of illnesses, including diabetes. If someone has any of those diseases, and has ever smoked, by law the court will be required to conclude that the smoking caused the illness.

Rather than argue on the merits, some Democratic Senators have alleged that Republican Senators have received campaign contributions from tobacco companies, and that they are killing this bill to benefit those companies. We highly resent the implied charge that there is a quid pro quo. We note that many Republicans who oppose this tax-and-spend monstrosity refuse tobacco company contributions. We further note that tobacco company contributions to Republican and Democratic candidates comprise only a tiny part of campaign spending. In contrast, rich liberal trial lawyers, many of whom literally may become billionaires if this bill passes, form the base of the Democratic Party’s campaign system. They are the largest source of official contributions for Democrats (only unions, through soft-money expenditures, spend more on behalf of Democrats than trial lawyers). We do not believe that the Democrats are paying off their trial lawyer patrons, but if there is any evidence of a quid pro quo arrangement it is on the other side of the aisle.

As we said at the outset, we would happily support a bill that will reduce youth smoking. Sensible, effective measures that can and should be taken, but which are not in this bill, include encouraging States to make underage smoking illegal, encouraging them to adopt laws to rescind the drivers’ licenses of kids who are caught smoking, and making kids who are caught smoking attend summer school or perform community service. We would also favor cutting other spending out of the \$1.7 trillion Federal budget in order to increase funding for cancer research, addiction research, and other similar research to cure the problems caused by smoking and to find ways to break its addictive hold on people. This bill is so bad, though, we do not see how it can serve as the basis for any measure that becomes law. Senators need to go back to the drawing board. We urge them to oppose cloture, and to then join us in sending it back to the Commerce Committee by supporting the Budget Act point of order to follow.